

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

TONY CERENTANO,

Plaintiff,

vs.

MOHAMAD ALHALABI,

Defendant.

Case No. 4:05CV1359SNL

MEMORANDUM AND ORDER

Plaintiff has filed this personal injury motor vehicle accident lawsuit alleging that defendant's negligence resulted in a rear-end collision causing injuries to plaintiff's shoulder, neck and lower back. This matter is before the Court on plaintiff's motion for partial summary judgment (#15), filed September 15, 2006. Defendant has filed a responsive pleading. This cause of action has recently been reset to March 19, 2007.

Courts have repeatedly recognized that summary judgment is a harsh remedy that should be granted only when the moving party has established his right to judgment with such clarity as not to give rise to controversy. New England Mut. Life Ins. Co. v. Null, 554 F.2d 896, 901 (8th Cir. 1977). Summary judgment motions, however, "can be a tool of great utility in removing factually insubstantial cases from crowded dockets, freeing courts' trial time for those that really do raise genuine issues of material fact." Mt. Pleasant v. Associated Elec. Coop. Inc., 838 F.2d 268, 273 (8th Cir. 1988).

Pursuant to Fed.R.Civ.P. 56(c), a district court may grant a motion for summary judgment if all of the information before the court demonstrates that "there is no genuine issue as to material fact and the moving party is entitled to judgment as a matter of law." Poller v. Columbia Broadcasting System, Inc., 368 U.S. 464, 467, 82 S. Ct. 486, 7 L.Ed.2d 458 (1962). The burden is on the moving party. Mt. Pleasant, 838 F.2d at 273. After the moving party discharges this burden, the nonmoving party must do more than show that there is some doubt as to the facts. Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986). Instead, the nonmoving party bears the burden of setting forth specific facts

showing that there is sufficient evidence in its favor to allow a jury to return a verdict for it.

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 91 L.Ed.2d 202 (1986);

Celotex Corp. v. Citrate, 477 U.S. 317, 324, 106 S. Ct. 2548, 91 L.Ed.2d 265 (1986).

In passing on a motion for summary judgment, the court must review the facts in a light most favorable to the party opposing the motion and give that party the benefit of any inferences that logically can be drawn from those facts. Buller v. Buechler, 706 F.2d 844, 846 (8th Cir. 1983). The court is required to resolve all conflicts of evidence in favor of the nonmoving party. Robert Johnson Grain Co. v. Chem. Interchange Co., 541 F.2d 207, 210 (8th Cir. 1976).

Summary judgment is not appropriate unless all the evidence points one way and is susceptible to no reasonable inferences sustaining the position of the nonmoving party.” Hindman v. Transkrit Corp., 145 F.3d. 986, 990 (8th Cir. 1998)(citations omitted); *see*, Mayer v. Nextel West Corp., 318 F.3d. 803, 806 (8th Cir. 2003) *citing* Keathley v. Ameritech Corp., 187 F.3d. 915, 919 (8th Cir. 1999). However, it is clear that to survive summary judgment, a plaintiff must support his/her allegations with sufficient probative evidence to permit a finding in the plaintiff’s favor based upon more than mere speculation, conjecture, or fantasy. Putnam v. Unity Health Systems, Inc., 348 F.3d. 732, 733-34 (8th Cir. 2003) *quoting* Wilson v. Int’l Bus. Mach. Corp., 62 F.3d. 237, 241 (8th Cir. 1995); Girten v. McRentals, Inc., 337 F.3d. 979, 982 (8th Cir. 2003)(plaintiff’s theory of age discrimination failed “[b]ecause this theory is supported more by contentions and speculation than evidence, it is insufficient to withstand summary judgment.”).

In the instant matter, plaintiff seeks summary judgment on the issue of liability only. He asserts that the record is undisputed that defendant alone caused the accident and is liable under Missouri law. However, a review of the evidentiary record submitted to this Court for review by both parties indicates that an issue of material fact as to liability exists in this case. Defendant has raised the issue, both in his answer and in his deposition testimony, of plaintiff’s own negligence; i.e. stopping in the intersection without warning or cause, contributing to the accident at issue. Comparative fault is a jury issue, and under the circumstances, this Court cannot grant partial summary judgment on liability to the plaintiff.

As a final note, the Court advises plaintiff's counsel that the instant motion does not adequately comport with the requirements of Local Rule 4.01. In the future, motions for summary judgment shall be accompanied by a separate memorandum of law in support, and a separate statement of undisputed facts which correlates each individual statement of fact with supporting evidence in the record.

Dated this 31st day of October, 2006.



SENIOR UNITED STATES DISTRICT JUDGE